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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**  
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9 ANTHONY BURRIOLA,  
10 Petitioner,  
11 vs.  
12 MR. PALMER, et al.,  
13 Respondents.

Case No. 3:10-CV-00357-LRH-(VPC)

**ORDER**

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15 Petitioner, who is in the custody of the Nevada Department of Corrections, has submitted a  
16 petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 and an application to proceed in  
17 forma pauperis. The application is moot because petitioner has paid the filing fee. The court has  
18 reviewed the petition, and the court will refer this action to the United States Court of Appeals for  
19 the Ninth Circuit because the petition is successive.

20 Petitioner challenges the validity of the judgment of conviction in State v. Burriola, Case  
21 No. C143171, in the Eighth Judicial District Court of the State of Nevada. Petitioner was convicted  
22 of second-degree murder with the use of a deadly weapon. Petitioner challenged the same judgment  
23 of conviction in Burriola v. Palmer, Case No. 3:06-CV-00059-PMP-(RAM). The court dismissed  
24 that action because it was untimely pursuant to 28 U.S.C. § 2244(d). Petitioner appealed that  
25 dismissal. Both this court and the Court of Appeals for the Ninth Circuit denied a certificate of  
26 appealability. Petitioner then petitioned the Supreme Court of the United States for a writ of  
27 certiorari, and that was denied.

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1        “[D]ismissal of a section 2254 habeas petition for failure to comply with the statute of  
2 limitations renders subsequent petitions second or successive for purposes of . . . 28 U.S.C. §  
3 2244(b).” McNabb v. Yates, 576 F.3d 1028, 1030 (9th Cir. 2009). Petitioner must first obtain  
4 authorization from the court of appeals before this court can consider his petition. 28 U.S.C.  
5 § 2244(b)(3).

IT IS THEREFORE ORDERED that the clerk of the court file the application to proceed in forma pauperis.

8 IT IS FURTHER ORDERED that the application to proceed in forma pauperis is **DENIED**  
9 as moot.

10 IT IS FURTHER ORDERED that the clerk shall add Catherine Cortez Masto, Attorney  
11 General for the State of Nevada, as counsel for respondents.

IT IS FURTHER ORDERED that the clerk shall electronically serve respondents with a copy of the petition and a copy of this order. No response by respondents is necessary.

IT IS FURTHER ORDERED that, pursuant to Circuit Rule 22-3(a), the clerk of the court shall refer this action to the United States Court of Appeals for the Ninth Circuit.

IT IS FURTHER ORDERED that the clerk of the court shall administratively close this action.

18 DATED this 10th day of August, 2010.

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**LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE**